Office-Supreme Court, U.S.
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No. 572

IN THE

Supreme Court of the United States

October Term, 1966

PERCY SINFIELD,

Petitioner,

vs.

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, in and for THE COUNTY OF MISSOULA, and THE HONORABLE EMMET GLORE, one of the Judges thereof,

Respondents.

RECORD BEFORE THE COURT BELOW ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

EDWARD T. DUSSAULT
Western Bank Building
Missoula, Montana
Attorney for Petitioner

No.

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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 11165

STATE EX REL. PERCY SINFIELD, *Petitioner,*

vs.

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, in and for THE COUNTY OF MISSOULA and THE HONORABLE EMMET GLORE, one of the Judges thereof, *Respondents.*

CERTIFICATE

UNITED STATES OF AMERICA
STATE OF MONTANA } ss.

I, THOMAS J. KEARNEY, being the duly and regularly elected, qualified and acting Clerk of the Supreme Court of the State of Montana, DO HEREBY CERTIFY:

That the attached are full, true and correct copies of the original Petition for Writ of Supervisory Control, Complaint, Summons, District Court Journal Twentieth Day April Term, 1966, Motion for Temporary Restraining Order and Order to Show Cause, Temporary Restraining Order and Order to Show Cause, Motion for Intervention, Notice of Motion, Complaint in Intervention, Objections to Motion for Intervention, District Court Journal

Twenty-Seventh Day April Term, 1966, Findings and Order, and Order of Supreme Court, as filed and of record in my office as Clerk of said Court, constituting the full record of the proceedings in the above-entitled Court in the above-entitled cause.

Dated this 1st day of September, 1966.

/s / Thomas J. Kearney
Thomas J. Kearney
Clerk of the Supreme Court of the
(COURT SEAL) State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

STATE EX REL. PERCY SINFIELD, *Petitioner*, vs. THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, in and for the COUNTY OF MISSOULA, and THE HONORABLE EMMET GLORE, one of the Judges thereof, *Respondents.*	No. 11165 PETITION FOR WRIT OF SUPERVISORY CONTROL

Comes now the petitioner and respectfully represents:

I.

That on or about the 17th day of May, 1966, a complaint was filed in the District Court of the Fourth Judicial District in and for the County of Missoula as Cause No. 29454 entitled the Montana Power Company, a Montana corporation, Plaintiff, vs. Missoula Electric Co-operative, Inc., a corporation, and Eugene F. Pike as Manager, Defendants.

That a Summons was issued thereupon. That a true copy of said complaint and summons is annexed hereto, marked Exhibit A, and by reference made a part hereof.

II.

That petitioner is the owner of one of the premises described in said complaint which was at the time, and is now, under construction.

III.

That petitioner, prior to May 17, 1966, had applied for membership in, and for electric service from, the Defendant Cooperative. That both applications of petitioner were accepted by the Defendant Cooperative and electric service by the Cooperative was extended to petitioner's premises on May 17, 1966.

IV.

That within two hours after electric service was made available by the Defendant Cooperative to petitioner's premises, the complaint aforesaid was filed by the Plaintiff Power Company, along with a Motion for a temporary restraining order.

That an Order to Show Cause and a Temporary Restraining Order was issued by the Respondent Court and served upon the Defendant Cooperative and its Manager. That a true copy of said Motion, Order to Show Cause and Temporary Restraining Order is attached hereto, marked Exhibit B and by this reference made a part hereof.

That subsequent to the issuance and service of said Temporary Restraining Order, the electric service to petitioner's premises was cut off by the Defendant Cooperative.

V.

That petitioner filed his Motion for Intervention in the above-entitled litigation on the 20th day of May, 1966, and same was noticed for hearing on the 27th day of May, 1966, before the Respondent Court. That a true copy of said Motion for Intervention and Notice is annexed hereto, marked Exhibit C, and by this reference made a part hereof.

VI.

That with the Motion for Intervention, petitioner served upon counsel for the litigants a copy of his proposed complaint in intervention. That a true copy of such proposed Complaint in Intervention is annexed hereto, marked Exhibit D, and by this reference made a part hereof.

VII.

That subsequent to the filing of such Motion for Intervention and prior to the hearing thereof, Plaintiff Power Company filed its Objections to petitioner's Motion for Intervention. That a true copy of said Objection is annexed hereto, marked Exhibit E and by this reference made a part hereof.

VIII.

That on the 27th day of May, 1966, a hearing was had before the Respondent Court, pursuant to notice, on petitioner's Motion for Intervention. Testimony was adduced by petitioner and Briefs filed by counsel.

The matter was taken under advisement by Respondent Court and the Temporary Restraining Order continued in effect until further order of the Court.

That a true copy of the Journal Entry of the Respondent Court with reference to said hearing is annexed hereto, marked Exhibit F, and by this reference made a part hereof.

IX.

That on June 1, 1966, the Respondent Court made and entered its Findings and Order Denying Petitioner's motion for Intervention. That a true copy of such Findings

and Order is annexed hereto, marked Exhibit G, and by this reference made a part hereof.

X.

That the act of Respondents in denying petitioner his right to intervene in the litigation between the Power Company and the Cooperative was an abuse of sound judicial discretion and was arbitrary, unlawful and unjust.

XI.

That the petitioner has a direct interest in the subject matter of the litigation. That petitioner cannot be adequately represented by either or both of the parties to said litigation. That petitioner will be bound by the judgment in said cause.

XII.

That petitioner has no plain, speedy or adequate remedy at law.

WHEREFORE, your petitioner prays that a Writ of Supervisory Control, or other appropriate Writ, issue out of this Court, directing the Respondent Court to rescind its Order Denying Petitioner's Motion to Intervene and that this Court issue its Order directing the Respondent Court to allow petitioner's Complaint in Intervention to be filed.

/s/ Edward T. Dussault
Edward T. Dussault
Western Bank Building
Missoula, Montana
Attorney for Petitioner

STATE OF MONTANA
County of Missoula } ss.

PERCY SINFIELD, the petitioner in the above-entitled cause, being first duly sworn, deposes and says: That he has read the foregoing Petition, knows the contents thereof, and that the same is true of his own knowledge.

/s / Percy Sinfield

Subscribed and sworn to before me this 13th day of June, 1966.

/s / Edward T. Dussault
Notary Public for the State of Montana
Residing at Missoula, Montana
(SEAL) My Commission expires June 25, 1967

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA,
IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation,
Plaintiff,
vs.
MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation.
Defendants.

No. 29454
COMPLAINT
FILED
May 17, 1966
ALMA R. SAMSEL,
Clerk
By Dorothy S.
Murphy, Deputy

COMES NOW THE PLAINTIFF, and for cause of action against the Defendants, and each of them, alleges as follows:

I.

At all times mentioned herein, Defendant Missoula Electric Co-operative, Inc., was and now is a co-operative, non-profit, membership corporation duly organized and existing under Title 14, Chapter 5, Revised Codes of Montana 1947, as amended, with its principal place of business at Missoula, Montana, and by virtue thereof is authorized to supply electric energy to rural areas only, as defined by statute, in which electrical current and service are not otherwise available from existing facilities and plants.

II.

At all times mentioned herein, Defendant Eugene F. Pike was and now is the duly appointed and acting Manager of Missoula Electric Co-operative, Inc., a corporation.

III.

At all times mentioned herein, Plaintiff, The Montana Power Company, was and now is a public utility corporation organized and existing under and by virtue of the laws of the State of Montana and qualified to do business and doing business in the State of Montana, and by virtue thereof and of Section 70-301 Revised Codes of Montana 1947, holds a franchise to supply electric energy and service anywhere within the State of Montana. Plaintiff at all times mentioned herein has been, and now is, engaged in the business of selling, distributing, furnishing and supplying electric energy and service in the County of Ravalli, State of Montana, and elsewhere in the State of Montana. Plaintiff is subject to the regulatory jurisdiction of the Public Service Commission of Montana. Plaintiff is a taxpayer in Montana. Plaintiff has available, and at all times herein mentioned had available, electrical current and service to the areas herein described from its existing facilities and plants.

IV.

Two residences are being constructed in the SE¼NW¼ Section 11, T10N, R20W, M.P.M., west of highway No. 93 in the vicinity of the Florence Carlton School in Ravalli County, Montana, hereinafter referred to as the premises. Such premises will require electric current and service, both during the construction and after the completion of the residences.

V.

At all times mentioned herein, the Plaintiff had and now has facilities and plants adequate and suitable to supply electric energy and service to the said premises in the County of Ravalli, State of Montana, and in the vicinity thereof, and is ready, able and willing to supply electric energy and service to said premises in accordance with the rates, rules and regulations prescribed by the Public Service Commission of Montana.

VI.

Defendant, Missoula Electric Co-operative, Inc., has offered to furnish electric energy and service to the said premises, and is about to commence construction of an electric line to supply electric energy and service to said premises and intends to provide electric energy and service to said customers at said premises, contrary to the laws of the State of Montana.

VII.

Plaintiff has notified Missoula Electric Co-operative, Inc., that Plaintiff has existing facilities and plant from which electric current and service is available to said premises and that it is unlawful under the statutes of Montana for Defendant Co-operative to provide said service, and has requested Defendant Co-operative to desist from constructing a line to furnish said electric service and not to furnish said electric service, but that Defendant Co-operative, despite said notice, intends to construct said line and intends to provide electric service to the said premis

VIII.

Defendant, Missoula Electric Co-operative, Inc., a corporation, is without any right, power or authority to construct electric facilities or to sell, distribute or supply electric energy and service to the said premises in the County of Ravalli in an area where electric current and services are available from the existing facilities and plant of the Plaintiff, and all of such acts of Missoula Electric Co-operative, Inc., as herein specifically alleged, are illegal and contrary to the intent and purpose of said Title 14, Chapter 5 of the Revised Codes of Montana 1947, as amended.

IX.

The Montana Power Company has in the past expended large sums of money in the construction of electric transmission and distribution lines and facilities in the State of Montana, including the aforesaid area of Ravalli County in contemplation of furnishing electrical energy and service to prospective users in said area. If the Defendant Co-operative is permitted to furnish electrical energy and service in said area to said premises, the Plaintiff will suffer great and irreparable loss, injury and damage through the loss of anticipated consumers of Plaintiff's electric service, which damages are uncertain in that they would be very difficult to determine, and that the Defendant Co-operative will, unless restrained by an injunction from this Court, unlawfully supply electric current and service in an area wherein electric service and energy are available from the existing facilities and plant of the Plaintiff, and that each additional electrical connection to serve residences or other customers in said area of Ravalli County will require a separate suit and will result in a multiplicity of suits in order to protect the

rights of the Plaintiff, contrary to the form and force of the laws of the State of Montana under which the Defendant Co-operative was created and derives its powers, and will thereby nullify and set at naught the spirit and intent of said laws. The Plaintiff has no adequate remedy at law.

WHEREFORE, the Plaintiff prays judgment against the Defendants and each of them as follows:

A. That this Court immediately issue a Restraining Order directed to said Defendants requiring them to desist from construction of any electric lines or facililties to serve the said premises in Ravalli County, Montana, or in the vicinity thereof, and from furnishing any electric energy or service to said premises during the pendency of these proceedings or until further order of this Court.

B. That this Court immediately issue an Order to Show Cause to be served upon the Defendants as to why the Defendants should not be restrained by injunction during the pendency of this action from constructing electric lines or facilities to the said premises in Ravalli County, Montana, and from the furnishing of any electrical current and service to said premises.

C. That the Defendant Missoula Electric Co-operative, Inc., a corporation, be permanently restrained by injunction from providing electrical energy and service to the said premises, hereinbefore described, in Ravalli County, Montana, or in areas in the vicinity thereof in which electrical current and service is otherwise available from existing facilities and plant.

D. For costs of suit and for such other and further relief as may be equitable in the premises.

GARLINGTON, LOHN & ROBINSON
By /s/ J. C. Garlington
Western Montana Bank Bldg.
Missoula, Montana
/s/ William H. Coldiron
William H. Coldiron
/s/ John C. Hauck
John C. Hauck
40 East Broadway
Butte, Montana
Attorneys for Plaintiff
The Montana Power Company

STATE OF MONTANA
County of Silver Bow } ss.

W. W. TALBOTT, being first duly sworn on behalf of the Plaintiff Corporation in the above-entitled action, says:

That he is a Vice President of said Corporation; that he has read the foregoing Complaint and knows the contents thereof, and that the same are true of his own knowledge.

/s/ W. W. Talbott

Subscribed and sworn to before me this 17th day of May, 1966.

/s/ Robert R. Robinson
Notary Public for the State of Montana
Residing at Missoula, Montana
(SEAL) My Commission expires June 1, 1966

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA,
IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation,
Plaintiff,
vs.
MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation,
Defendants.

No. 29454
SUMMONS
FILED
May 19, 1966
ALMA R. SAMSEL
Clerk
By Dorothy S. Murphy, Deputy.

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned to answer the Complaint in this action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your Answer and serve a copy thereof upon the Plaintiff's attorney within twenty days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Witness my hand and the seal of said Court this 17th day of May, 1966.

/s/ ALMA R. SAMSEL, Clerk
By Dorothy S. Murphy, Deputy Clerk

Garlington, Lohn & Robinson
Western Montana Bank Bldg.
Missoula, Montana

William H. Coldiron
John C. Hauck
40 East Broadway
Butte, Montana
Attorneys for Plaintiff,
The Montana Power Company

SHERIFF'S RETURN OF SERVICE

Office of the Sheriff

STATE OF MONTANA }
County of Missoula } ss.

I HEREBY CERTIFY,

That I received the Annexed Summons on the 17th day of May, in the year 1966. That I personally served the said Summons on the 18th day of May, 1966, upon Missoula Electric Co-operative, Inc., and Eugene F. Pike, two of the defendants named therein, by delivering a copy of said Summons to Eugene F. Pike, Manager of Missoula Electric Co-operative, Inc., and Eugene F. Pike personally in the said County of Missoula.

That at the time when I served the said Summons upon the said Eugene F. Pike, Manager of Missoula Electric Co-operative, Inc., and Eugene F. Pike and at the same place I also served upon them a copy of the complaint upon which the said Summons was issued by delivering said copy to each of them personally.

That the said ..... being ..... the Defendant named in the said ..... resident .... of the same County, to-wit: the County of Missoula.

AND, That after due and diligent search, and after making inquiry of divers persons in sundry places I am unable to find within the said County of Missoula ..... being ..... of the Defendant .... in the said ..... Summons.

Service . . . $2.00 WILLIAM J. WALKER, Sheriff
Mileage . . . $2.50 /s/ John Lockridge, Deputy Sheriff

DISTRICT COURT JOURNAL TWENTIETH DAY APRIL TERM, 1966

May 17, 1966
DEPT. NO. 1

THE MONTANA POWER COMPANY, a Montana corporation,
vs.
MISSOULA ELECTRIC CO-OPERATIVE, INC., etc. et al.
No. 29454

The Judge in Department No. 1 presiding in the absence and by the telephone request of the Judge in Department No. 3 who is in jury trial in Lake County.

On motion of the plaintiff, IT IS ORDERED that a Temporary Restraining Order and an Order to Show Cause issue returnable Friday, May 27, 1966 at 2:00 P.M.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation,

Plaintiff,

vs.

MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation.

Defendants.

No. 29454

MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

FILED
May 17, 1966
ALMA R. SAMSEL
Clerk
By Alma R. Samsel

COMES NOW, the Plaintiff through its attorneys and moves this Court for a temporary restraining order enjoining the Defendants from supplying electric service and energy to the area described herein, and from promoting and extending the use thereof into said area, including electric energy and service to be used in connection with the construction of two residence buildings in the SE¼NW¼ Section 11 T10N, R20W, M.P.M., Ravalli County, State of Montana, as described in the Complaint now on file herein, during the pendency of the proceeding now before this Court, and until further order of this Court; that said temporary restraining order be made immediately effective and that the same be served on each of the Defendants herein named, and that they and each of them be ordered to show cause on the 27th day of May, 1966 at 2:00 o'clock P.M., in the Court Room of the Courthouse of Missoula County in Missoula, Montana, why a preliminary injunction should not be granted pen-

dente lite. This Motion is based on the verified Complaint of the Plaintiff now on file herein.

DATED this 17th day of May, 1966.

Garlington, Lohn & Robinson
By /s/ J. C. Garlington

Western Montana Bank Bldg.
Missoula, Montana

/s/ William H. Coldiron
William H. Coldiron

/s/ John C. Hauck
John C. Hauck
40 East Broadway
Butte, Montana
Attorneys for Plaintiff
The Montana Power Company

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation, *Plaintiff,* vs. MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation. *Defendants.*	No. 29454 TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

On motion of the Plaintiff's attorneys based on the verified Complaint of the Plaintiff on file, a copy of which is attached hereto, it appearing to the Court that the Defendants, knowing that electrical service and supply are available in the area described as the SE¼NW¼ Section 11, T10N, R20W, M.P.M., Ravalli County, Montana, where two residence buildings are to be constructed, have unlawfully promoted and offered to extend and supply electric energy and service to said area and premises and intend to unlawfully construct lines and facilities and to supply electric energy and services to said premises and area where electric service and energy are otherwise available from existing facilities and plants of the Plaintiff; and that such extension will cause irreparable injury to Plaintiff and will constitute an unlawful trespass on Plaintiff's franchise property rights to provide and supply electrical energy and service in an area in which said electrical energy and service are available from existing plants and facilities of the Plaintiff.

IT IS THEREFORE ORDERED and this does order the Defendants Missoula Electric Co-operative, Inc., and Eugene F. Pike, its manager, to forthwith refrain from supplying electric service and energy to the construction site in the SE¼NW¼ Section 11, T10N, R20W, M.P.M., Ravalli, County, Montana, and from promoting and extending the use thereof into said area, including electric energy and service to be used in connection with the construction of two residence buildings in the described area in which electrical current and service are otherwise available from existing facilities and plants of the Plaintiff until the 27th day of May, 1966 at 2:00 o'clock, P.M., at which time Defendants shall appear at the courtroom in the Courthouse of Missoula County in Missoula, Montana, then and there to show cause why preliminary injunction should not issue.

IT IS FURTHER ORDERED that a copy of this Order, together with a copy of the verified Complaint on file herein, and a copy of Plaintiff's Motion, be served on each of the Defendants named herein.

IT IS FURTHER ORDERED that Plaintiff file a written undertaking with sufficient sureties to the effect that Plaintiff will pay to the Defendants such damages not exceeding $1000.00 as such parties may sustain by reason of said injunction if this Court finally decides that the Plaintiff was not entitled thereto.

IT IS FURTHER ORDERED that said Defendants may except to the sufficiency of the sureties within five (5) days after service of injunction upon them. If they fail to do so, they are deemed to have waived all objections to the sufficiency of the sureties.

DATED this 17th day of May, 1966.

/s / Emmet Glore
DISTRICT JUDGE

Done with the understanding of the Judge of Dept. No. 3 in his absence in Jury Trial in Lake County, and with his full concurrence.

/s / Emmet Glore

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA,
IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation, *Plaintiff,* vs. MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation. *Defendants.*	No. 29454 MOTION FOR INTERVENTION FILED May 20, 1966 ALMA R. SAMSEL, Clerk By Della M. Dyrdahl, Deputy

TO THE HONORABLE DISTRICT COURT:

Comes now PERCY SINFIELD, 2500 South Avenue West, Missoula, Montana, and respectfully represents to the Court as follows:

I.

That applicant seeks to intervene in the above-entitled action under Rule 24, (a) (2) Rules of Civil Procedure, "When the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action;".

II.

That applicant is the owner of one of the residences described in Paragraph IV of Plaintiff's Complaint herein.

III.

That applicant did apply for membership in the Defendant and for service from it and that on the 3rd day of May, 1966, said application for membership and for electric service to applicant's premises was approved by the Defendant's Board of Trustees.

IV.

That pursuant to said application for service, the Defendant did install an extension from its existing distribution line in the immediate vicinity of applicant's proposed residence now under construction and electric service was made available to applicant by the Defendant on May 17, 1966. That applicant and his building contractor have been denied the electrical service supplied by the Defendant through such installation since the issuance of the temporary restraining order served on Defendants on May 18, 1966.

V.

That applicant has an immediate and direct interest in the outcome of this litigation. That should the Plaintiff obtain a preliminary injunction and a permanent injunc-

tion and judgment in its favor, this applicant will be bound by said judgment and thereby denied his freedom of choice in obtaining electric service.

WHEREFORE, applicant respectfully moves this Honorable Court for an order allowing him to intervene in this action.

/s / Edward T. Dussault
Attorney for Applicant

STATE OF MONTANA
County of Missoula } ss.

PERCY SINFIELD, being first duly sworn upon his oath, deposes and says: That he has read the foregoing Motion for Intervention; that he knows the contents thereof, and that the matters, facts and things therein stated are true of his own knowledge.

/s / Percy Sinfield

Subscribed and sworn to before me this 20th day of May, 1966.

/s / Edward T. Dussault
Notary Public for the State of Montana
Residing at Missoula, Montana
(SEAL) My Commission expires June 25, 1967

Service of the foregoing Motion for Intervention is acknowledged by receipt of a copy thereof this 20th day of May, 1966.

GARLINGTON, LOHN & ROBINSON
By /s/. J. C. Garlington
Of Counsel for Plaintiff
EDWARD T. DUSSAULT
By /s / Edward T. Dussault
Attorney for Defendants

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA,
IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation,
Plaintiff,
vs.
MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation.
Defendants.

No. 29454
NOTICE OF MOTION
FILED
May 20, 1966
ALMA R. SAMSEL, Clerk
By Della M. Dyrdahl, Deputy

TO: The Montana Power Company, Plaintiff, and to Garlington, Lohn & Robinson, William H. Coldiron and John C. Houck, its Attorneys.

PLEASE TAKE NOTICE that the undersigned will move the Court herein in the Court Room in the Court House at Missoula, Montana, on the 27th day of May, 1966, at 10:00 o'clock A.M., or as soon thereafter as counsel can be heard, for its Order granting leave to Percy Sinfield to file his Complaint in Intervention pursuant to his Motion heretofore filed herein.

Dated May 20, 1966.

/s/ Edward T. Dussault
Attorney for Applicant Percy Sinfield

Service of the foregoing Notice is acknowledged by receipt of a copy thereof this 20th day of May, 1966.

GARLINGTON, LOHN & ROBINSON.
By /s/ J. C. Garlington
Of Counsel for Plaintiff

EDWARD T. DUSSAULT
By /s/ Edward T. Dussault
Attorney for Defendants

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA,
IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation, *Plaintiff,*
vs.
MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation.
Defendants.
PERCY SINFIELD,
Plaintiff in Intervention,
vs.
THE MONTANA POWER COMPANY, a Montana corporation,
Defendant in Intervention.

No. 29454

COMPLAINT IN INTERVENTION

Comes now PERCY SINFIELD, intervenor, and for cause of action against the Montana Power Company, a Montana corporation, complains and alleges as follows:

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I.

That intervenor is presently a citizen of Montana and a resident of the County of Missoula, State of Montana, and is now engaged in the construction of a residence near the town of Florence, Ravalli County, Montana.

II.

That in construction of said residence, electric service is necessary for the convenience of the building contractor employed by intervenor.

III.

That in the immediate vicinity of said residential site, there are electric distribution lines of both The Montana Power Company and Missoula Electric Co-operative, Inc. That intervenor desired electric service from Missoula Electric Co-operative, Inc., and therefore applied for membership in said Cooperative and likewise applied for electric service from it. That both said applications were approved by said Cooperative and electric service was made available by it to intervenor on May 17, 1966.

IV.

That on May 18, 1966, by action brought by the Defendant in Intervention, the Defendant Missoula Electric Co-operative was temporarily restrained from further supplying electric service to intervenor until further order of this Court and as a result thereof, intervenor and his building contractor are now without electric service at intervenor's building site aforementioned.

V.

That The Montana Power Company seeks, by its action filed herein, to force this intervenor to secure electric service from it, thereby depriving this intervenor of

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his freedom of choice to secure electric service from whom he chooses.

VI.

That the action of the Montana Power Company is in violation of intervenor's constitutional rights guaranteed him by the 5th and 14th amendments of the United States Constitution and of his constitutional rights guaranteed him by Article III, Section 3, of the Constitution of the State of Montana.

VII.

That by its action, The Montana Power Company seeks to deprive this intervenor of his right to full enjoyment of his property. That intervenor will suffer irreparable damage now and in the future if he is denied the right to secure electric service from the supplier of his choice.

WHEREFORE, intervenor prays judgment against the Defendant Montana Power Company as follows:

1. That the temporary restraining order now in effect be forthwith dissolved.

2. That the Defendant be dismissed with prejudice.

3. That the Defendant Montana Power Company be restrained from harassing this intervenor.

4. That intervenor be granted the right to secure electric service from the supplier of his choice.

5. For his costs of suit herein expended.

6. For such other and further relief as to the Court may seem meet and equitable in the premises.

/s/ Edward T. Dussault
Attorney for Plaintiff in Intervention

STATE OF MONTANA
County of Missoula } ss.

PERCY SINFIELD, being first duly sworn upon his oath, deposes and says: That he is the Plaintiff in intervention in the above-styled cause; that he has read the foregoing Complaint, knows the contents thereof, and that the matters, facts and things therein stated are true of his own knowledge.

/s / Percy Sinfield

Subscribed and sworn to before me this 20th day of May, 1966.

/s / Edward T. Dussault
Notary Public for the State of Montana
Residing at Missoula, Montana.
(SEAL) My Commission expires June 25, 1967

Service of the foregoing Complaint in Intervention is acknowledged by receipt of a copy thereof this 20th day of May, 1966.

GARLINGTON, LOHN & ROBINSON

By .....
Of Counsel for Plaintiff and Defendant in Intervention

EDWARD T. DUSSAULT

By .....
Attorney for Defendants.

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA,
IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation,
Plaintiff,
vs.
MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation.
Defendants.

No. 29454
FILED
May 26, 1966
Alma R. Samsel, Clerk
By Dorothy S. Murphy, Deputy
OBJECTIONS TO MOTION FOR INTERVENTION

TO THE HONORABLE DISTRICT COURT:

Comes now the Plaintiff, The Montana Power Company, and objects to the Motion for Intervention herein filed by Percy Sinfield, hereinafter referred to as "Sinfield," on the following grounds and for the following reasons:

I.

Answering the representations made in Paragraph I of the Motion for Intervention, Plaintiff denies that Sinfield has any interest of any kind whatsoever in this case or that he is or may be inadequately represented by the existing parties, or that he is or may be bound by any judgment in this action.

In this connection, the Plaintiff alleges that the sole issue in this action is whether the Defendant Missoula Electric Co-operative, Inc., is prohibited by Montana law from serving the premises described in the Complaint. If said Missoula Electric Co-operative, Inc., is not authorized by the laws of the State of Montana to extend electric service to the premises here in question, then no contractual arrangements or membership arrangement with the Defendant Co-operative can alter or change the laws of the State of Montana.

II.

Answering the representations made in Paragraph II of the Motion for Intervention, the Plaintiff has no information sufficient to form a belief as to the representations therein contained, and therefore denies the same.

III.

Answering the representations contained in Paragraph III of the Motion for Intervention, the Plaintiff admits that Sinfield did apply for membership in the Defendant Co-operative, but the Plaintiff does not have sufficient knowledge to form a belief as to the other allegation in said Paragraph, and therefore denies the same.

IV.

Answering the representations contained in Paragraph IV of the Motion for Intervention, the Plaintiff admits the Defendant Co-operative has installed an extension from its existing distribution line to the premises described in the Complaint; the Plaintiff admits that the temporary re-

straining order herein served on the Defendants on May 18, 1966 prevents the Defendants from serving electric power through the facilities constructed to the premises described in the Complaint; the Plaintiff has no knowledge or information sufficient to form a belief as to the other representations in Paragraph IV, and therefore denies the same. In connection with the representations in Paragraph IV, the Plaintiff states that electric service is available from the Plaintiff to Sinfield and to his building contractor at the premises described in the Complaint.

V.

Answering the representations contained in Paragraph V, the Plaintiff denies that Sinfield has any immediate connection or interest whatsoever in the outcome of this litigation, or that he will be bound by any judgment herein. In connection with the representations made by the Motion for Intervention, the Plaintiff states that the Defendant Co-operative is prohibited by the laws of the State of Montana from serving the premises described in the Complaint.

WHEREFORE, Plaintiff respectfully moves this Court to deny the Motion for Intervention.

/s/ William H. Coldiron
One of the Attorneys for Plaintiff
THE MONTANA POWER COMPANY
40 East Broadway
Butte, Montana

STATE OF MONTANA
County of Silver Bow } ss.

GEO. W. O'CONNOR, being first duly sworn, deposes and says: That he is a Vice President of The Montana Power Company, a corporation, that he has read and the above and foregoing Objections to Motion for Intervention, and that the matters and things contained and alleged therein are true, and that he makes this verification for and on behalf of said Corporation.

/s / Geo. W. O'Connor

Subscribed and sworn to before me this 25th day of May, 1966.

/s / William H. Coldiron
Notary Public for the State of Montana
Residing at Butte, Montana
(SEAL) My Commission expires March 26, 1967

Service of the above and foregoing Objections to Motion for Intervention and receipt of a copy thereof is hereby acknowledged this 26th day of May, 1966.

/s / Edward T. Dussault
Attorney for Applicant

DEPT. No. 1

DISTRICT COURT JOURNAL TWENTY-SEVENTH DAY APRIL TERM, 1966

May 27, 1966

THE MONTANA POWER COMPANY, a Montana corporation,

vs.

MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation.

No. 29454

R. H. Robinson and William H. Coldiron, co-counsel for the plaintiff, Edward T. Dussault, attorney for defendants and for the proposed intervenor, Percy Sinfield, came into Court, this being the time set for hearing on Order to Show Cause why a preliminary injunction should not be granted pendente lite, Motion for Intervention and defendant's Motion to Dissolve Temporary Restraining Order.

By stipulation of counsel, Motion for Intervention to be heard first.

Plaintiff's motion that no further action be taken in this proceeding until the Attorney General has been notified was taken under advisement and the Court proceeded to take evidence on the Motion for Intervention.

Percy Sinfield and Gene Pike were sworn and testified on behalf of the proposed intervenor.

Thereafter, plaintiff's motion to deny the Motion for Intervention was argued by respective counsel and by the Court taken under advisement.

It was further agreed by the Court and counsel that the Court could decide whether the Temporary Restraining Order heretofore issued herein could be continued in effect or dissolved, after considering the pleadings filed, the record made and the briefs of counsel heretofore submitted.

It was further agreed after the decision of the Court, on the matters submitted for decision, further proceedings would be had as set by the Court.

IN THE DISTRICT COURT
OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF MONTANA,
IN AND FOR THE COUNTY OF MISSOULA

THE MONTANA POWER COMPANY, a Montana corporation,

Plaintiff,

vs.

MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation, and EUGENE F. PIKE, as manager of MISSOULA ELECTRIC CO-OPERATIVE, INC., a corporation.

Defendants.

FINDINGS AND ORDER

FILED
June 2, 1966
Alma R. Samsel,
Clerk
By Lea D.
LaFriniere,
Deputy

The above-entitled action came on regularly for hearing before the above-entitled Court, the Honorable Emmet Glore presiding, on the 27th day of May, 1966, the court sitting without a jury, for the purpose of hearing the Motion for Intervention of Percy Sinfield which had been properly filed and noticed for hearing at this time and to further hear the Defendant's Motion to Dissolve Temporary Restraining Order which had also been properly filed and noticed for hearing. R. H. Robinson and William H. Coldiron appeared as attorneys for the Plaintiff and Edward T. Dussault appeared as attorney for the applicant for intervention, Percy Sinfield and for the Defendants. The Motion for Intervention was first brought on for consideration. The Plaintiff moved that since constitutional issues had been raised by the applicant for intervention no further action be taken in this proceeding until the Attorney General had been notified as required by Rule 24 (c) of the Rules of Civil Procedure. The Court took this

motion under advisement and proceeded to take evidence on the Motion for Intervention. The applicant for intervention presented evidence and rested. At the termination of the applicant for intervention's case the Plaintiff moved that the Motion for Intervention be denied. Argument was heard by counsel for the parties, including the applicant for intervention, and at the close thereof it was agreed by the Court and counsel for all participants that the Court would decide the Motion for Intervention on the pleading filed, the record made in the court and after consideration of the briefs which had been filed by counsel. It was further agreed by the Court and counsel that the Court could decide whether the Temporary Restraining Order heretofore issued herein should be continued in effect or dissolved, after considering the pleadings filed, the record made and the briefs of counsel heretofore submitted. It was further agreed after the decision of the Court on the matters submitted for decision further proceedings would be had in this cause on the call of the Court.

FINDINGS OF FACT

1. The applicant for intervention is a resident of Missoula, Montana. He owns a portion of the premises described in the Complaint and is causing a house to be built thereon. Applicant has applied to the Defendant Cooperative for electric service and for membership in the Cooperative. He has been accepted for membership in the Cooperative. The applicant for intervention desires to take and receive electric service from the Defendant Cooperative and refuses to accept electric service from the Plaintiff. At the time the applicant for intervention was accepted as a member of the Defendant Cooperative, he knew that the Plaintiff insisted that supplying electric service to the premises described in the complaint would be taken as unlawful by the Plaintiff and that Plaintiff

would immediately bring an action in the courts to enjoin such service. Despite this knowledge, the applicant for intervention has continued to act in full concert with the Defendant Cooperative, and his testimony indicates to this Court that the Motion for Intervention was filed by the applicant in full accord with the Defendant Cooperative, and not at all as an independent action to enforce an assumed independent right.

2. The Defendant Cooperative is a cooperative corporation created under the provisions of Chapter 5 of Title 14, RCM 1947, and serves electric energy in rural areas in Ravalli County and other parts of western Montana. The Defendant Pike is the manager of the Defendant Cooperative. The Defendant Cooperative has a distribution line north of the town of Florence, Montana, and on May 17, 1966, extended a line for this distribution line to the premises described in the Complaint. The Defendant Cooperative is ready and willing to furnish electric service to the applicant for intervention, and to other customers in the area of the premises described in the Complaint. The Defendant Cooperative is not furnishing electric service to the premises described in the Complaint at this time.

3. The Defendant Pike was informed by the Plaintiff on April 26, 1966, that the Plaintiff considered the extension of electric service to the premises described in the Complaint by the Defendant Cooperative to be unlawful and that the Plaintiff would bring a suit to enjoin such service. With this knowledge the Defendant Cooperative nevertheless extended a line to said premises on May 17, 1966, before resolution of the dispute was attempted by the Defendant in the court.

4. The plaintiff is a public utility serving electric power and energy to a large part of Montana including Ravalli County and the area described in the Complaint.

The Plaintiff is ready, willing and able to furnish electric service to the premises described in the Complaint and to the applicant for intervention, Sinfield. The Plaintiff through the construction contractor has been furnishing construction electricity to the premises described in the Complaint. There is electric current and service available from the Plaintiff's existing plants and facilities in the area and at the premises described in the Complaint.

5. The applicant for intervention has shown no independent interest in this action. If he has such an interest, it will be adequately represented in this litigation by the existing defendants. Furthermore, the applicant for intervention cannot be bound by a judgment in this case.

6. Continuation of the Temporary Restraining Order heretofore issued is necessary and proper to protect the rights of all parties hereto, pending the final determination of this cause and will not work undue hardship upon any parties or persons.

ORDER

After consideration of the premises, the Plaintiff's verified Complaint and other pleading filed herein, the evidence presented and the briefs of counsel, it is ordered and this does order:

1. That the Motion for Intervention is hereby denied.

2. The Temporary Restraining Order herein is continued in full force and effect until further order of this Court.

3. The Plaintiff's motion to continue further proceedings on the Motion for Intervention until the Attorney General is notified is rendered moot by this order denying the Motion for Intervention and therefore the motion to

continue further proceedings pending such notification is neither affirmed or denied.

DATED this 1st day of June, 1966.

/s/ Emmet Glore
Judge

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 11165

STATE EX REL. PERCY SINFIELD,
Petitioner,

vs.

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA, in and for the COUNTY OF MISSOULA, and THE HONORABLE EMMET GLORE, one of the Judges thereof,
Respondents.

FILED
June 20, 1966
Thomas J. Kearney
CLERK OF
SUPREME COURT
STATE OF
MONTANA

ORDER

PER CURIAM:

Original proceeding. Petition for writ of supervisory control. The application is denied and the proceeding is dismissed.

DATED this 20th day of June, 1966.